IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.265 OF 2001

IN

WRIT PETITION NO.1745 OF 1998

...

Mrs.Nini Gulla ...Appellant

v/s.

1. The Principal
   B.M.Ruia Mahila Mahavidhyalaya

2. Marwadi Sammelan,

3. S.N.D.T. women’s University

4. Mrs.Shalini Sinha

5. Shri R.G.Sindhkar

6. Shri K.R.Dhanuka ...Respondents

...

Mr.M.P.Vashi i.b M.P.Vashi & Associates for the Appellant.

Mr.N.M. Ganguli for the Respondents.

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 6TH SEPTEMBER,2007

JUDGMENT (PER D.K.DESHMUKH, J.)

1. By this Appeal, the Appellant challenges the order dated 22-1-2001 passed by the learned single Judge of this court in Writ Petition No.1745 of 1998. That Writ Petition was filed by the present Respondents Nos. 1 & 2 challenging the order passed by the College Tribunal dated 16-6-1998 in Appeal No.7 of 1995. That appeal was filed by the present Appellant.

2. The facts that are material and relevant for deciding this Appeal are, B.M.Ruia Mahila Mahavidhyalaya is the college affiliated to the S.N.D.T. Women University. The Appellant was appointed as a Lecturer in Economics in the Commerce Faculty of the College in the year 1981. Her appointment was approved by the University and her services sere confirmed as a Lecturer with effect from 22nd July, 1985. According to the Appellant, she also was Head of the Department of Economics at the college, and she was also a Member of the Board of Studies. According to her, when the post of Principal of the College became vacant, she had applied for that post in the year 1992. She had competed for the post of Principal, but she was not appointed as Principal. According to her, it is only after she competed for the post of Principal unsuccessfully that process of her harassment started. She was placed under suspension on 20th April, 1994. Several charges were levelled against her. A Departmental inquiry was held. Inquiry Officer at the conclusion of the departmental inquiry held that the charges levelled against the Appellant have been proved. Accepting the findings of the Inquiry Officer, the Management dismissed her from

service.

3. Against the order of dismissal, she filed an appeal before the College Tribunal. One of the grounds on which the order of dismissal was challenged, was that the Inquiry Officer has relied on the deposition of the witnesses examined during the inquiry without giving the Appellant an opportunity to cross-examine the witnesses. The College Tribunal, therefore, held that the Inquiry was held in breach of the principles of natural justice and therefore, the College Tribunal by its order dated 30th September, 1996 allowed the appeal set aside the order of termination and ordered reinstatement in service of the Appellant with full back wages. That order was challenged in Writ Petition No.2349 of 1996 by the Management. That Writ Petition was disposed of by order dated 23-12-1996. By that order, the order of the College Tribunal was set aside. The appeal was remanded back to the College Tribunal with a direction to decide the appeal afresh after permitting the Appellant to cross-examine the witnesses who were examined during the departmental inquiry. After remand proceedings were conducted in accordance with the order of this

court, the college Tribunal again decided the Appeal by its order dated 16-6-1998. By that order, the College Tribunal held that out of nine charges levelled against the Appellant, charges Nos.5, 6 & 9 were given up by the management and that out of the remaining charges, charge No.1A and charge No.2 have been proved. The College Tribunal held that for the proved misconduct the punishment of dismissal or termination cannot be awarded. Therefore, the College Tribunal ordered reinstatement in service. So far as back wages are concerned, the College Tribunal ordered that the Appellant is entitled to 2/3rd emoluments as back wages. That order of the College Tribunal was challenged in Writ Petition No.1745 of 1998 by the Management.

4. In the petition filed by the management, the management claimed that not only charge No.1A and charge No.2, but all other charges except charges Nos.6, 7 & 9 levelled against the Appellant were proved and therefore, the College Tribunal was not justified in directing reinstatement in service of the Appellant. That Writ Petition was decided by the learned single Judge by order dated 22-1-2001. The learned single Judge by that order held that not only

charge No.1A and charge No.2 are proved, but even charges Nos. 3 & 4 are also proved against the Appellant. In other words, the learned single Judge set aside the finding recorded by the College Tribunal that charges 3 & 4 are not proved against the Appellant and held that charges Nos. 3 & 4 have been proved. The learned single Judge also held that the College Tribunal was not justified in granting reinstatement in service to the appellant. According to the learned single Judge even assuming that charges Nos. 3 & 4 are not proved, even on the finding that only charge 1A and charge 2 are proved, the College Tribunal should not have interfered with the punishment imposed by the Management. It is, this, order of the learned single Judge which is challenged in the present appeal.

5. It appears from the judgment of the learned single Judge that before the learned single Judge submissions were made on behalf of the Appellant that the College Tribunal was not justified in denying 1/3rd back wages to the Appellant. However, it appears that the petition filed by the Appellant against the order of the Tribunal was not before the learned single Judge and the learned single Judge was

considering only the Writ Petition filed by the management against the order of the Tribunal. Therefore, in the petition filed by the management obviously the Appellant/teacher could not have challenged that part of the order of the College Tribunal by which 1/3rd back wages are denied to her. Therefore, as by the order impugned in this Appeal only the writ petition filed by the management has been decided, we will have to restrict the consideration of the Appeal to the finding of the learned single Judge that even charges 3 & 4 are proved against the Appellant and that the College Tribunal was not justified in interfering with the punishment awarded by the management.

6. Perusal of the order of the College Tribunal shows that according to the College Tribunal only charge No.1A & charge No. 2 were proved against the Appellant. Charge No.1A which has been held to be proved by the tribunal was that the behaviour of the Appellant with the students was rude and she used abusive language and humiliated them in front of the whole class-room. Charge No.2 which has been held to have been proved by the College Tribunal is that the Appellant is in the habit of reporting late for work

and she also entered wrong time in the muster roll affecting the working and discipline of the College. It appears from the order of the College Tribunal that only that part of Charge No.2 which alleges that she was reporting late for work is proved. Charge No.3 in relation to which finding of the College Tribunal was that it has not been proved, by which it was alleged that she is away from the lecture for long intervals on occasions and she is found in the office indulging in long conversations or having long conversation on telephone during the time she was required to hold lecture. The finding of the tribunal that this charge has not been proved, has been reversed by the learned single Judge. Charge No.4 which has also been held by the College Tribunal not to be proved, is in relation to the Appellant not following the time table in the College. This charge is also held by the College Tribunal not have been proved, but the learned single Judge has reversed that finding of the College Tribunal and has held that even this charge has been proved.

7. It is clear from what has been observed above that in this Appeal we have to consider three questions; (i) whether the learned single Judge was

justified in reversing the finding of the college tribunal on charges Nos. 3 & 4 and recording a finding that those charges have been proved against the Appellant?; (ii) Whether the learned single Judge was justified in setting aside the order of granting reinstatement in service with 2/3rd back wages on the footing that Charge Nos. 1A, 2, 3 & 4 are proved; and (iii) Whether the learned single Judge was justified in saying that even assuming that only charges Nos.1A and 2 are proved, the college tribunal should not have interfered with the punishment imposed by the management;

8. We have heard the learned Counsel appearing for both sides at length. The principal submission of the learned counsel appearing for the Appellant was that all these charges relate to the period after 1993. These charges were levelled against the Appellant at the behest of the Principal. The material available on record shows that none of the charges are proved against the Appellant. He also submitted that the learned single Judge was not justified in interfering with the finding of fact recorded by the Tribunal.

9. The learned Counsel appearing for the Respondent-management, on the other hand, submitted that the learned single Judge has considered entire evidence on record and has held that charge No.3 and charge No.4 are proved and therefore, the learned single Judge was justified in interfering with the order of the College Tribunal. He also submitted that even assuming that even charges Nos.1A and 2 are proved, considering the nature of misconduct, the College Tribunal was not justified in granting reinstatement in service to the Appellant. In his opinion, most that the College Tribunal could have awarded is six months of wages as compensation to the Appellant.

10. Now, so far as first question is concerned, the Tribunal in its judgment has discussed charge No.3 thus,

> . The charge is that she is away from the lectures for long intervals on occasion and she is found in the office indulging in long conversations or having long conversions on telephone during the time she is required to hold lectures. Students suffered on this account and it is against the discipline of the college. And it disturbed the working of

class rooms. Two memos one dated 26.11.93 and the other dated 25.02.94 are mentioned and replies thereto dated 20.11.93 and 28.03.93 are mentioned. This charge is that her action amounted to indiscipline willful and persistent negligence and this amounted to misconduct. The evidence that has been referred to by the Enquiry Officer in this behalf is of the Appellant rather than of the management. He has referred to the written statement of and criticised her answers on the point. Her defence is that so far was conversation with Mrs. Udeshi the Superintendent is concerned she want to act her in the office to pay condolence of Mrs. Udeshi having lost her father and was attending the office for the first time on that day. Mrs. Udeshi has supported her. It is not shown that she went away from her class or during the course of her lectures.

. So far as the phone call is concerned, she says that once she was called for answering the phone call and when she went to the office by the time she reached the phone got disconnected. She therefore came back and while she was sitting in the lecture room, she was informed about the telephone call and call was from the fellow examiner in connection with the examination work and therefore she had to go. In the circumstances I find that it is difficult to hold that she is indulging herself in long conversations during the

> course of her lectures either on telephone or with fellow students or with office staff. Two memos are given to her and replied which unfortunately were not found satisfactory by the Principal. One has to note that so far as this charge is concerned it is not mentioned in the charge except making reference to the two memos on which dates Appellant was found engaged in long conversations.
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> . The charge is with regard to the conversation she had and not with regard to her arriving late in college. It is also in evidence that the conversation was in low tone showing that it did not disturb the working of the classes. The letters which are referred to are produced and approved by the Principal but not by the authors of these letters. Neither Alka not D'souza the authors has been examined. In my opinion, the finding on this charge based on the replies does not deserve acceptance.

11. Perusal of the above quoted portion shows that according to College Tribunal the inquiry officer had not relied on any evidence tendered by the management to hold that this charge is proved. The tribunal has also considered the evidence in detail and has held that this charge cannot be held to have been proved. So far as the order of the learned single Judge is concerned, the finding of the learned single Judge in

relation to this charge is to be found in paragraph 10 of the order of the learned single Judge. It reads as under:

> . In support of this charge I find that there is even sufficient material though it may not be precise, which could be called as legal evidence in the strict sense. I, however, cannot forget that the criminal trial is different from a domestic enquiry. According to me, there is some material in support of this charge to hold her guilty. It is significant to note that even the tribunal has not held that the charge was not proved. The tribunal has found it difficult to hold and has not held that the charge was not proved at all. There has been some material in support of this charge and therefore, it can be held that the charge is proved.

The comparison of the material considered by the tribunal for holding that the charge No.3 has not been proved with the material considered by the learned single Judge shows that the learned single

Judge has not at all considered any evidence on record for reversing the finding recorded by the College Tribunal. All that the learned single Judge said is that there is sufficient material available on record, but he has not indicated what was that material on the basis of which this charge can be said to have been proved. In our opinion, finding recorded by the tribunal that charge No.3 has not been proved was a finding of fact recorded by the College Tribunal after considering evidence on record. The learned single Judge could have disturbed that finding and set it aside only in case he found that any relevant material was excluded by the Tribunal from consideration in recording the finding or the Tribunal had taken into consideration any irrelevant material. In exercise of his jurisdiction under Article 226 of the Constitution, the learned single Judge could not have issued writ of certiorari setting aside the finding recorded by the tribunal without finding that any relevant material is excluded from consideration or any irrelevant material is taken into consideration by the tribunal. In our opinion, the learned single Judge has exceeded his jurisdiction in setting aside the finding of the College Tribunal recorded on

charge No.3.

12. So far as Charge No.4 is concerned, the Tribunal has discussed Charge No.4 and has recorded his finding that this charge is not proved as follows:-

> . Charge No. 4 is with regard to the Appellant not following the time table in the College. It has been stated in that charge that she held lecturers as per her own convenience and has not found in the lecture room allotted to her as per the said time table. She was given a memo dated 10.02.04 and her explanation dated 28.02.04 was not found satisfactory. According to the charge this amounted to indiscipline and subordination and misconduct.
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> . It has to be noted that the Enquiry Officer referred to the evidence of HW-18 Mrs. Arati Mehta. She is a lecturer in English and working since 1974. She stated , "about 10 years ago when I was acting as a Supervisor of Commerce Section I noticed that Mrs. Gulla was not following time table." Her evidence is recorded in July, 1994 and the incident referred by her is therefore, of they year 1984. I think, it is difficult to reply upon this evidence to hold the Appellant guilty on that charge in the year 1994. The Enquiry

Officer unfortunately did not take note of this aspect of the matter and only quoted the statement made by this witness partly omitting the most important part of the same. That was not fair.

. He then referred to the evidence of witness No. 21 Mrs. Sandhya Pandya. She stated, " I am also told by the students that she does not follow the official time table of the College." This part of the evidence therefore, is based on not her personal knowledge but on the basis of students telling her. The Enquiry Officer then referred to the evidence of the Principal of the College and the Principal stated, "No Professor is entitled to change the time table as per his convenience." As a matter of fact for that no evidence was necessary. One has to follow the time table prescribed and not change it on her own. The question was whether she was or she was not following the prescribed time table and on this part of the evidence is not referred to by the Enquiry Officer.

. The Enquiry Officer then referred to the statement of the Appellant and finds fault with her. The Appellant has according to him stated that if teachers are absent and the teacher who has got the next lecture is free, he/she takes the earlier lecture of the absent teacher. Such adjustment is done in the colleges. This is also not unusual thing in

colleges. Some mutual adjustment is made and surely this would not about to indiscipline and a misconduct.

. I find that the management has not adduced material in the form of time table - various specific instances in which the Appellant did not follow the time table. A general statement can't establish a serious charge proved.

. Though the charge was on the point only of not following the time table the Enquiry Officer referred to other material not relevant for this charge. We referred to the evidence of management witness Nos. 3, 7, 11, 13, 14, 15, 21. He summarised the evidence. The evidence referred to is on the point of method of..... of the appellant. It is stated that she was very fast in teaching and she completed the syllabus in the month of December which was impossible as far as the subject was concerned. And the opinion of teachers in the subject stating that it was impossible to complete the portion by the month of December. He therefore ultimately grew an inference that this amounted to dereliction of duties and was..... to the time table, severely affecting the curriculum of the class. I find the approach of the Enquiry Officer is far from satisfactory. He could not and need not have mixed up the evidence on altogether different charges. I

already stated as to what the charge was and that related to only not following the time table, not giving lectures in the room allotted as per the time table. He seems to have missed the point and not also addressed himself correctly to the charge framed.

. The only communication on record in this connection is dated 12.04.94 addressed by the Principal to the Appellant. It does not state the period during which the Appellant did not follow the time table and had her own and which disturbed the working of the College. General statement is made that she was not to be found in the lecture room allotted to her. And when she was caught red handed, she went on making lame excuses. This was received on 26.02.94 and she replied to the same immediately on 28.02.94. She denied the allegations. She asked for particulars, date, time and class engaged and not engaged so as to enable her to give a detailed reply. She sent this reply by registered post. I do not find that the allegations in the letter nor charge specific and the evidence led on that charge is far from satisfactory. I already referred to the evidence of Anita Sinha who stated that she was not following the time table 10 years ago.

. It appears that the Principal addressed several communications to the Appellant in the month of February, March and April. She

> replied to all of them and denied the statements made in the communications from the Principal she takes long interval many times and she spent more time in college office by indulging in long conversations with office staff. She has also replied this by stating that she went to offer her condolences to the office Superintendent Mrs. Udeshi, who had lost her father and had resumed her duties on that day. She had also stated that she has pointed out this fact to the Principal immediately when asked about it. She asked for details of other visits by this reply. The charge once again I may state is silent on the point of details. I, therefore, find that finding of the Enquiry Officer on Charge No. 4 is not correct.

13. Perusal of the above quoted discussion from the order of the College Tribunal shows that the College Tribunal referred to the material on record which was taken into consideration by the Inquiry Officer for holding that the charge is proved and has discussed that material. He has also referred to other material which is on record and after giving reasons recorded a finding that the charge No.4 is not proved. So far as the order of the learned single Judge is concerned, the learned single Judge reverses the finding recorded by the College Tribunal and

holds that charge No.4 is proved in following manner,

> . Same is the case with the charge No. 4 which the tribunal has held not proved. This charge is that the teacher was not following time table in the college and that she was holding lectures as per her own convenience and that she was not found in the lecture room allotted to her as per the said time table. She was given two memos in that respect. Apart from the oral evidence we cannot lose sight of the two memos which were given to the teacher. By communication dated 12th April 1994, the Principal and cautioned the teacher in this respect. The tribunal has held this charge not proved for want of further better details. The tribunal has held other charges not proved following the same logic. It is not necessary for me to deal with reasonings recorded by the tribunal to say that they are not proved. According to me, charge Nos. 3 and 4 have also been sufficiently proved.

Perusal of the above discussion shows that according to the learned single Judge this charge is proved because of the two memos issued to the Appellant. The letter dated 12th April, 1994 which has been referred to by the learned single Judge has been considered in detail by the College Tribunal in its order. The observations from the order of the

College Tribunal quoted above shows that the College Tribunal has held that in the letter dated 12-4-1994 a bald allegation was made without giving any details and therefore by reply, the Appellant asked for the details so that she can reply to it, but the details were never given to her. In our opinion, before holding that on the basis of the letter dated 12th April, 1994 this charge can be said to have been proved it was for the learned single Judge to deal with that letter. The approach adopted by the learned single Judge for reversing the finding cannot be termed as a proper approach to be adopted by a judicial authority. The finding recorded by the Tribunal on both the charges namely charge No.3 and Charge No.4 were findings of fact, which were recorded by the tribunal after considering the evidence on record, and therefore, the learned single Judge could have reversed those findings only after recording a finding that the Tribunal has recorded those findings of fact either by ignoring relevant material or by taking into consideration irrelevant material or that there is some error apparent on the face of the record in those findings. Without recording any such finding, in our opinion, the learned single Judge had no jurisdiction to disturb

those findings.

14. Having, thus, come to the conclusion that the learned single Judge was not justified in holding that Charges Nos. 3 & 4 are proved against the appellant, it is not necessary for us to consider the question whether because charges Nos. 3 & 4 have been held to be proved by the learned single Judge in addition to charge No.1A and charge 2, the learned single Judge was justified in interfering with the order of the College Tribunal granting reinstatement in service. Therefore, the only question that now remains to be considered is whether the learned single Judge was justified in interfering with the order of the tribunal granting reinstatement in service with 2/3rd back wages to the Appellant after recording a finding that only charges Nos.1A and 2 are proved against the Appellant. Charge No.1A which has been held to have been proved against the Appellant is that her behaviour with the students was rude, the College Tribunal has recorded a finding that the misconduct alleged by charge No.1A is misconduct defined by clause 3b of the S.N.D.T. University Statute. The College Tribunal has also held that the Statute of the University does not prescribe major

penalty for the misconduct of this type, and therefore, according to him minor penalty of Reprimand, warning or Censure can be imposed for this misconduct.

15. So far as Charge No.2 is concerned, though by charge No.2 it was alleged that she is in the habit of reporting late for work, the College Tribunal has found that the Appellant was not coming on time for her first lecture at 8 a.m. What is pertinent to be noted is , even this was only during the year 1993-94. There is no allegation that even previously she used to be late. One more factor that is to be considered is, it is an admitted position that the same College Management had placed the Appellant at serial No.2 in the Selection List of candidates who were selected for the post of Principal. It is further to be seen that there is no element of loss of confidence involved in either charge No.1A or charge No.2. Before the inquiry was started against the Appellant, she had completed 13 years of service and out of those 13 years, for about 7 years she was the Head of the Department. After considering all these aspects, the College Tribunal held that the Appellant was entitled to be reinstated in service.

So far as the learned single Judge is concerned, only observations to be found in this regard read thus:-

> Even assuming that the tribunal was right in discarding the entire material in support of charges Nos. 3 and 4, in my opinion, the management is fully justified in terminating the services of the teacher on the basis of the charges which have been held by the tribunal to have been proved.

16. There are no reasons given by the learned single Judge for recording this finding. The learned single Judge has not considered the nature of charge No.1A and charge No.2 from the point of view whether for those charges the extreme penalty of termination of service could have been imposed. Perusal of the provisions of sub-section 61(2) of the Maharashtra Universities Act shows that power of the Tribunal hearing appeal against the order of termination of the services of the college teacher are contained in that Section. Section 61 of the Act reads as under:

> 61.(1) On receipt of an appeal, where the Tribunal after giving reasonable opportunity

to both parties of being heard, is satisfied that the appeal does not pertain to any of the matters specified in sub-section (1) of section 59 or is not maintainable by it, or there is no sufficient ground for interfering with the order of the university or management, it may dismiss the appeal.

(2) Where the Tribunal, after giving resonable opportunity to both the parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law, contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the university or the management, as the case may be, partially or wholly, and direct the university or, as the case may be, the management --

(a) to reinstate the employee on the same post or on a lower post as it may specify;

(b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify;

(c) to give arrears of emoluments to the employee for such period as it may specify;

(d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service of reduction in rank, as the case may be;

(e) where it is decided not to reinstate the employee or in any other appropriate case, to give such sum to the employee, not exceeding his emoluments for six months, by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or

(f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case.

17. Perusal of the above quoted provisions shows that when the college tribunal finds that the order passed by the management terminating the services of the teacher is contrary to law or is improper, the college tribunal has power to set aside the order and direct reinstatement in service of the employee. It has also the power to award a lesser punishment on the Appellant. Thus, the order of the college tribunal setting aside the order of termination of the services of the appellant and directing her reinstatement in service was an order which was perfectly within the jurisdiction of the college tribunal, and therefore, before setting aside the order which was clearly within the jurisdiction of the tribunal, in our opinion, the learned single Judge was under a duty to assign cogent reasons as to how according to the learned single Judge the college tribunal has committed an error of law in exercising jurisdiction which is clearly vested in it. Perusal of the order of the learned single Judge which we have referred to above shows; that the learned single Judge has not given any reasons as to why according to him for the proved misconduct the punishment of termination from service can be awarded

considering the nature of the misconduct and past service record of the Appellant.

18. In our opinion, the learned single Judge clearly exceeded his jurisdiction in setting aside the order passed by the College Tribunal which was within the jurisdiction of the tribunal.

19. In the result, therefore, the appeal succeeds and is allowed. The order passed by the learned single Judge dated 22-1-2001 in Writ Petition No.1745 of 1998 is set aside. Writ Petition No.1745 of 1998 is dismissed. The Respondents shall pay cost of the Appeal to the Appellant.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

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